



Task Force on Fair Justice for All

Draft Minutes

November 27, 2017 - 10:00 a.m. to 2:00 p.m.

Present: Dave Byers, Tom O’Connell, Judge Michael Bluff, Judge Maria Elena Cruz, Jeff Fine, Judge John Hudson, Robert James, Paul Julien, Judge Dorothy Little, Jeremy Mussman, Tony Penn, Dianne Post, Judge Antonio Riojas, Leonard Ruiz, Alessandra Soler (Jared Keenan), Judge Don Taylor, Kathy Waters

Telephonic: Mary Ellen Sheppard, Rebecca Steele

Absent: Kent Batty, Kirstin Flores, Ryan Glover, Michael Kurtenbach, Judge Lisa Roberts, Lisa Royal

Presenters/Guests: Donald Jacobson, Julie Dybas, Judge Joseph Olcavage, Jerry Landau, Jennifer Greene, Judge Ron Reinstein (Ret.), Heather Murphy

Staff: Theresa Barrett, Susan Pickard, Sabrina Nash, Kathy Sekardi, Administrative Office of the Courts (AOC)

Welcome and Opening Remarks

David Byers welcomed the members and asked Kathy Sekardi to call the roll. Mr. Byers noted the recently signed administrative order extending this task force through to June 20, 2018.

Approval of Minutes from May 2, 2017

David Byers presented the minutes of the May 2, 2017, meeting.

Motion: To approved the minutes of the May 2, 2017, meeting as written. The motion was seconded. **Action:** Passed **Vote:** Unanimous

Update on Recommendations in Progress

Don Jacobson provided an update on the progress being made on the Arizona Judicial Council-approved Task Force recommendations.

Setting release conditions

- Changes have been made to Rules 6 and 7, and Forms 6 and 7 to establish options regarding appearance bonds and release conditions.
- Administrative Order (A.O.) 2017-69 changes “bond schedules” to “fine and deposit schedules.”

- The adoption of Petition R-17-0015 changes preventative detention goes into effect April 2, 2018.
- The Post-Conviction Actions Subcommittee has been established and is working toward statute and rule changes regarding set aside.
- Public Safety Assessments (PSA) have been implemented in all courts. A pilot of moving court information into the Justice Web Interface (JWI) to allow all information to be accessible in a single source. Next step is to work toward reducing human involvement by identifying only those areas where interpretation is needed.

Financial Sanctions

- Statements regarding payment plans have been added to the Arizona Traffic Ticket and Complaint (ATTC)
- Model language regarding payment plans has been developed and distributed to all courts for use on web sites.
- A.O. 2017-80 requires payment plans to be instituted in all courts and specifies the types of payment to be accepted by courts.
- Scripts and tools for reduction of legal financial obligations, and CAP and FRP programs have been developed.
- An Order to Show Cause bench card has been developed.
- The adoption of R-17-0015 also requires courts to only use a warrant when all other options have failed.

Education

- A.O. 2017-101 makes specialized training for all judges who conduct Initial Appearance (IA) hearings mandatory.
- Training sessions and tools for reducing fines and surcharges, and determining ability to pay are being presented at every opportunity.

Defendant treatment needs

- The Mental Health in the Criminal Justice System Subcommittee has been established to review statute and rules, and develop standards and reporting processes.
- Developed a template A.O. for presiding judges that would allow Rule 11 hearings to be conducted by limited jurisdiction courts.
- A State Justice Institute (SJI) grant to help develop protocols, with the help of the National Center for State Courts (NCSC), for presiding judges to hold a convening of local stakeholders related to mental illness in the criminal justice system has been submitted.

Additional Efforts

- Text Notification System – pilot complete - rolling out to all AJACs courts – Tucson Police Department has made the cell phone number field mandatory. The officer cannot print the ticket without it.

- Online Dispute Resolution – pilots moving forward under the Arizona Commission on Access to Justice.
- Legislative proposals, similar to last year's, are ready to be submitted to the legislative process.
- In agreement with Clean Elections, process for reducing surcharges has been modified.
- Researching the use of online dispute resolution process for correctable violations.
- Exploring alternatives to immediate suspension of drivers licenses due to a civil traffic failure to appear.

Side Note:

The Pretrial Justice Institute (PJI) released a study of the state of pretrial justice in America in November 2017. Arizona received one of only ten B's given in the study. Only New Jersey received an A.

Concerns/Comments:

- Has outreach been made to members of the law enforcement master list regarding the changes to the ATTC? Yes.
- The benefit eligibility letter from the Department of Economic Security provides the most accurate information and can be accessed online and printed by the recipient.
- Is the text notification system available in Spanish? Yes.

Action Item: Jeremy Mussman offered to share a letter regarding social security disability benefits and discretionary fines and fee with Kathy Waters and David Byers.

Report on the Scottsdale Municipal Court initiatives based on Fair Justice for all Task Force recommendations

Julie Dybas, Court Administrator introduced Judge Joseph Olcavage, Presiding Magistrate Scottsdale Municipal Court, who provided an update on the court's efforts to implement the Task Force recommendations. While there have been challenges, the court has achieved the following:

CAP: Implemented 11-18-16 and through 11-18-17. Program requires 5 to 20% down

- Cases in program 1,699
- Cases removed 751
- Cases paid in full 308
- Total amount waived 0
- Total paid in program \$662,143.49

TIME PAYMENTS: Payment contracts are freely given, based on ability to pay. Minimum payment is \$50, but can be waived. No judicial involvement.

AVAILABLE PAYMENT OPTIONS: Pay on-line (court pays transaction fee); over the phone, in-person, recurring billing; Apple Pay; and Google Wallet

Judge Olcavage shared the Scottsdale's Simplified Payment Ability Form, automated "Ability to Pay" tool, and notification models for failure to pay and failure to appear.

Some of Scottsdale's programs include:

- Walk-in calendar to address warrants,
- Exploration of online capability to post bond,
- A public defender is present for in-custody Initial Appearance hearings,
- If a defendant is going to be referred to Mental Health Court an attorney is appointed,
- An MVD kiosk is available at the court,
- Two Information windows to assist customers have been added,
- Closed caption videos (arraignment video in English and Spanish),
- Telephonic pleas,
- Call-in available for OSC,
- Ability to email or fax proof of compliance,
- Submitting car monitor report to the court enables defendant not to appear in court that month, and
- Exploring LA County approach of providing information to the public using avatars

[Update from the Mental Health and the Criminal Justice System Subcommittee](#)

On behalf of Chair, Kent Batty, Don Jacobson provided an update on the progress of the Mental Health and the Criminal Justice System Subcommittee. This subcommittee is tasked to examine the management of cases for individuals who have mental health issues.

[Rule 11 Workgroup progress](#)

Mr. Jacobson began with a review of the template administrative order to implement competency proceedings in criminal matters in limited jurisdiction courts, then discussed the Rule 11 policy and procedure outline. Mr. Jacobson thanked the Glendale and Mesa Municipal Courts for their work in piloting the process.

Dianne Post expressed her concern about ensuring the mental health providers are qualified to be appointed as a mental health expert and asked that additional guiding language be added to the outline. Jeremy Mussman offered to provide language to Ms. Post regarding Maricopa County's process for annual or bi-annual review of court appointed counsel who appear on their list. Mr. Byers offered to take the language to AJC for consideration.

Action Item: Dianne Post to provide additional language regarding evaluations of expertise to staff.

Motion: To support the adoption of the template administrative order and the policy and procedure manual outline for use, if a county wants to extend the ability to conduct Rule 11 hearings to a limited jurisdiction court. The motion was seconded. **Action:** Passed **Vote:** Unanimous

Proposed Rule 11.5 amendments

The confluence of this Task Force's recommended amendments and those of the Criminal Rules Task Force created some confusion between the processes managed by the superior court and those managed by the limited jurisdiction court.

At issue are:

- Whether a superior court should authorize a limited jurisdiction court to order restoration of competency.
- Section (b)(2)(A)(i) – The superior court is mandated to order competency restoration treatment, if it finds the defendant to be restorable. This offers no alternative for those cases in which pursuit of restoration does not make sense. The superior court should have the option to dismiss.
- Section (b)(2)(A)(ii) – ‘15 months’ should be changed to “within the timeframes allowed by law” mirroring (b)(2)(A)(i).
- Section (b)(3)(A) – Concern was expressed that the language in (A) makes referral to superior court mandatory even if the State moves to dismiss the charge, and in the case of minor crimes, the resources required to pursue civil commitment or appointing a guardian may exceed the value to the community of continuing supervision over the defendant.

Motion: To request that the Mental Health Subcommittee allow the Task Force to submit a rule change petition in January to:

- 1) change section (2)(A)(ii) by deleting “15 months” and replacing that language with “the timeframes allowed by law;”
- 2) maintain option for the superior court to authorize the limited jurisdiction court to order competency restoration treatment; and
- 3) clarify that a limited jurisdiction judge cannot order civil commitment or appointment of a guardian;

The motion was seconded. **Action:** Passed. **Vote:** Unanimous.

The Task Force agreed the LJ court should not be tasked with oversight of non-restorable defendants, but discussed whether, in those cases in which the non-restorable defendant appears to be a danger to self or others, there shouldn't be a mechanism for the LJ court to order initiation of civil commitment proceedings by somebody. The Task Force referred this issue to the Subcommittee for a recommendation.

The discussions regarding the Sequential Intercept Model, a Rule 11 records central repository, and LJ court competency hearing outcome reporting that were listed on the agenda were tabled due to time.

Update from the Post-Conviction Action Subcommittee

Jerry Landau, Subcommittee Chair, provided an overview of the subcommittee; its three workgroups: Statutes, Rules and Records; and newly formed Juvenile Adjudication Set Aside, and progress.

Mr. Landau highlighted the proposed changes to A.R.S. §13-907

1. A person will be informed of the right to apply for a set aside at sentencing.
2. There is a two-year waiting period, if the person is sentenced or revoked to the Department of Corrections.
3. The Clerk of Court will not charge a fee for filing the application.
4. If a conviction is set aside:
 - a. The Clerk of the Court is required to notify the Department of Public Safety (DPS) and must restrict from public access and shall not disclose any information regarding the case except to a law enforcement agency, prosecuting agency or probation department, or by court order.
 - b. DPS will annotate the set aside on the person's criminal history, but will not redact or remove a record.
 - c. The person is not required to disclose the conviction or the arrest.
 - d. Notwithstanding section 13-905 or 13-906, the person's right to possess a gun or firearm is restored.
5. Nothing precludes an employer or prospective employer from either conducting a background check.
6. Set aside does not apply to the conviction of a criminal offense that involves a serious or violent or aggravated offense as list in section 13-706, an offense list in title 13, chapter 23 or title 13, chapter 35.1, an offense which the person is required to register pursuant to section 13-3821, an offense for which there has been a finding of sexual motivation pursuant to section 13-118, or a moving traffic violation.

Mr. Landau noted that discussion is ongoing about whether to exclude criminal offenses involving a dangerous offense from set aside. While the subcommittee previously did not exclude dangerous offenses, the topic will be reopened at the November 30th meeting because the proposed legislation may not move forward without the exclusion.

Concerns/Comments:

- Leave dangerous offenses in the list of exclusions or remove both dangerous offenses and the restoration of gun rights.
- Removal of dangerous offenses from the list of exclusions may greatly expand the restoration of gun rights and unintended consequences of that restoration.
- Dangerous offenses include a person having any instrument that could be used to cause serious bodily injury, and is overly broad. Whereas violent offense covers those offenses that the truly violent and serious offenses.

- Dangerous offenses are usually dropped in association with a plea agreement. When those offenses are charged, the offense was usually committed with a knife or a gun.
- Not excluding moving traffic violation would have numerous Arizona Department of Transportation (ADOT) ramifications.
- Breakup the dangerous offenses by excluding dangerous offenses that result in physical injury.

Motion: To support the amendments to A.R.S. § 13-907 with the exclusion of dangerous offense from set aside. The motion was seconded. **Action:** Passed Voice **Vote:** While there were members who voted “no,” the majority of the members voted Yea.

The vote regarding the Rules and Forms and the discussion regarding juvenile adjudication set aside that were listed on the agenda were tabled due to time.

Legislative Update

Jerry Landau reviewed the three restructure bills on which the Arizona Judicial Council (AJC) voted to seek legislation.

2018:01: driver license; sanction; civil traffic violations

- permits the court to restrict, in addition to suspend, a driver license,
- adds assessments to the list of financial obligations the Supreme Court may include,
- permits the court to employ alternative sanctions to community restitution upon a DUI conviction,
- permits the court to mitigate any mandatory civil penalty if the payment would cause a hardship,
- reclassified driving on a license suspended for failure to appear or pay to a civil traffic violation, and
- removes the requirement that law enforcement impound a vehicle if a person is driving on a suspended license.

2018-02: criminal offenses; monetary obligations

- permits a judge to mitigate any fine for hardship reasons, or waive all or part of mandatory community restitution due to medical condition,
- adds civil penalties and surcharges (except for Clean Elections) to the list of financial obligations for which a court may order community restitution,
- reduces annual interest on a criminal restitution order in favor of the state from 10% to 4%,
- allows a probationer to be eligible for earned time credit if restitution payments are current, and

- removes the ability to revoke probation at a civil contempt hearing and substitutes the ability to refer for revocation.

2018-03: sentencing; misdemeanors – authorizes the court to impose a term of community restitution, education, or treatment.

[Call to the public](#)

No persons from the public made comment.

A task force member suggested the addition of “Attaching court records may be helpful.” to the forms that were in the meeting packet, but were not discussed.

Mr. Byers noted that a final meeting of the Task Force would be scheduled for summer 2018.

[Adjournment](#)

Mr. Byers adjourned the meeting at 2:20 p.m.